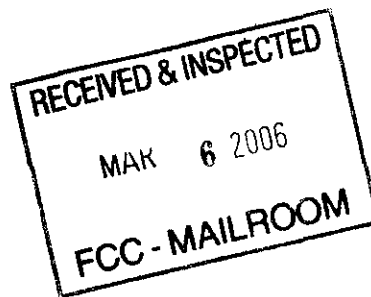


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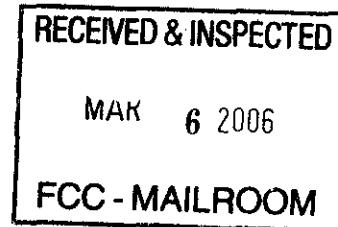
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Bethlehem
Area Public Library

Jack M. Berk
Executive Director

FAX COVER SHEET



DATE: 03/06/06
FAX TO: Appeals
FAX NO: 202-418-0187
COMPANY NAME: FCC
FAXED FROM: Anita Barrick
FAX NO: 610-867-2767
E-MAIL: abarrick@bapl.org
PHONE NO: 610-867-3761 X213
NUMBER OF PAGES (INCLUDING COVER): 12

MESSAGE:

This is a "Request for Review" for the following:
Applicant Name: Bethlehem Area Public Library
Applicant BEN: 125904
Service Provider SPIN: 143010240
Form 471 Application Number: 476706
Funding Request Number: 1315801
Administrator's Decision on Appeal - Funding Year 2005-2006
CC Docket No. 02-6
CC Docket No. 96-45

We would like to appeal the SLD's Decision on Appeal, dated January 13, 2006.

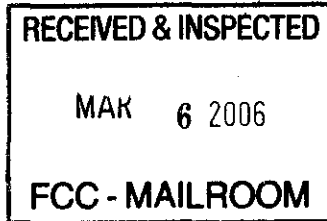
We did not violate the 28-day waiting period. The contract we submitted was the original contract for funding year 2004-2005, signed on 1/16/04. Although this contract would automatically renew in July 2005 if we did not notify USLEC otherwise, we did not sign any contract prior to the end of the 28-day waiting period. I am faxing a copy of the contract for 2005-2006, dated 2/7/05 which was after the ACD of 1/1/05. Please consider funding this appeal. I am also faxing a copy of the SLD's Decision on Appeal letter of 1/13/06.

Thank you for your consideration.

Anita Barrick
Anita Barrick, Finance Coordinator

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11 West Church Street, Bethlehem, PA 18018-5888 Phone (610) 867-3761 Fax (610) 867-2767 www.bapl.org



THIS CUSTOMER SERVICE AGREEMENT (this "Agreement") is made by and between:
US LEC of Pennsylvania Inc. ("US LEC"), having a place of business at 6801 Morrison Blvd. Charlotte, NC 28211; and

Customer Name: Bethlehem Area Public Library
State of Incorporation: Pennsylvania
Physical Address: 11 W Church St
City: Bethlehem State: PA Zip: 18018-5804
Contact Name: Jack M. Berk Title: Executive Director
Phone: 610-867-3761 Fax: 610-867-3767
Email: jberk@bapl.org
Tax Exempt Certificate Number: 75-371-185
• (Please attach a copy of your tax exempt certificate. You will be charged tax if this documentation is not provided.)

Billing Address (if different): 11 W Church St
City: Bethlehem State: PA Zip: 18018-5804

This Agreement is subject to the terms and conditions set forth herein, and in any Addendum attached hereto, which are a material part of this Agreement and are applicable to all services ordered hereunder, whether at this time or at a later date. Subject to all such terms and conditions, US LEC agrees to provide, and Customer agrees to receive and pay for, the services identified on Attachment A herein (the "Services").

Minimum Monthly Commitment:

\$ 500 Customer Initials: JB

Minimum Term Commitment:

12 months Customer Initials: JB

COMMITMENT LEVEL & TERM DISCOUNTS

Based on the Minimum Monthly Commitment and Minimum Term Commitment, Customer will receive the product specific pricing shown in the Published Rates, Terms and Conditions (hereinafter defined) and herein on Attachment A.

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GENERAL TERMS AND CONDITIONS

- 1. Agreement Subject to Tariffs.** This Agreement and all US LEC services and agreements are governed by the terms and conditions contained in US LEC's tariffs, price lists, and published terms and conditions (collectively, the "Published Rates, Terms and Conditions"). Published Rates, Terms and Conditions are available by contacting US LEC, or may be found at www.uslec.com. Tariffs or price lists, if applicable to a service of US LEC, are also available by contacting US LEC, or the appropriate regulatory agency. Published Rates, Terms and Conditions are subject to change by US LEC or the appropriate regulatory agency. Customer agrees to be bound by the provisions of US LEC's Published Rates, Terms and Conditions in effect from time to time. In the event of a conflict between the provisions of this Agreement and any applicable Published Rates, Terms and Conditions, the provisions of the Published Rates, Terms and Conditions shall govern.
- 2. Payment for Services.** Customer agrees to pay US LEC's charges for the Services as set forth in this Agreement or US LEC's applicable Published Rates, Terms and Conditions. Customer shall be responsible for paying for all calls originating from or terminating to either Customer's premises or the Services (whether or not authorized by Customer). Customer will be invoiced on a monthly basis. Invoices are payable upon receipt by Customer. If payments are not received by US LEC within twenty-eight (28) days of the date of the invoice, US LEC may at any time thereafter, subject to applicable laws or regulations, discontinue the Services, terminate this Agreement, request a security deposit and/or impose a late charge of one and one-half percent (1 1/2%) per month of the balance due (or such lesser amount as is permitted by applicable law). Except as otherwise provided by applicable law, Customer has the affirmative obligation of providing written notice and supporting documentation for any dispute of an invoice within forty-five (45) days of the date of such invoice. All undisputed invoice charges remain due and payable as described above and payment of such undisputed amounts shall not be withheld. US LEC may also apply any Customer deposit to the unpaid bill. Customer agrees to pay US LEC all costs and expenses of collection of any amounts due from Customer hereunder, including reasonable attorney's fees and expenses.
- 3. Minimum Monthly Commitment.** Customer agrees to pay for the Minimum Monthly Commitment indicated above. In any given month (after the third full month following Service initiation) where actual amounts billed to Customer fall below the Minimum Monthly Commitment, Customer will nonetheless be billed for and agree to pay the Minimum Monthly Commitment. If actual amounts billed to Customer are less than Customer's Minimum Monthly Commitment for a period of four consecutive months, US LEC may, but shall not be required to, reduce Customer's Minimum Monthly Commitment, and alter its rates accordingly, to reflect actual amounts billed to Customer in such four month period. US LEC may only reduce Customer's Minimum Monthly Commitment once during each calendar year. Service types that contribute toward the Minimum Monthly Commitment include voice, data and Internet services. Charges that do not contribute to the Minimum Monthly Commitment include: all charges for all non-recurring charges, such as installation charges, expedite charges and late payment penalties, taxes and other government-imposed surcharges, and all charges by other carriers that are not invoiced by US LEC to Customer. Multiple Customer locations specifically referenced herein or in an addendum hereto are aggregated to satisfy the Minimum Monthly Commitment.
- 4. Customer Satisfaction Guarantee.** If at any time, Customer is not satisfied that US LEC's network quality or the quality of the sales and service support Customer receives from US LEC is at least as good as the network quality and service that was provided to Customer by Customer's prior carrier(s), and US LEC fails to correct the problem to Customer's reasonable satisfaction within 15 days of receipt of written notice specifying in reasonable detail the nature of the problem, Customer may terminate this Agreement without penalty upon an additional 15 day written notice.
- 5. Term; Automatic Renewal.** This Agreement shall become effective on the date it is signed by both Customer and US LEC (the "Effective Date"), subject, however, to US LEC's approval of Customer's credit application and US LEC's approval of the suitability of Customer's premises for the Services. The Minimum Term Commitment commences on date of Service initiation. This Agreement shall continue in force for the Minimum Term Commitment selected on the first page of this Agreement unless sooner terminated as provided herein, provided however, that if Customer adds additional T-1 facilities under this Agreement after the Effective Date, Customer's Minimum Term Commitment with respect to such facilities shall commence on the date of Service initiation for such facility, and this Agreement shall continue in force until the Minimum Term Commitments applicable to all facilities ordered hereunder shall have expired. This Agreement shall be automatically renewed for successive one-year periods unless either party gives the other party written notice of non-renewal at least 30 days prior to the end of the then current term. The terms and conditions of this Agreement shall be applicable to any such renewal term.
- 6. Termination.** (A) If a party materially breaches any of the terms of this Agreement, the other party may terminate this Agreement without liability to the breaching party, but only if (1) the non-breaching party has given at least thirty (30) days notice of its intent to terminate and (2) prior to the effective date of such notice, the breaching party has not substantially remedied such breach. Notwithstanding the foregoing, US LEC may discontinue, suspend, or terminate the Services for non-payment of any amount owing hereunder when due, including non-payment of a required security deposit, on the date notice is given, or on the earliest date allowed by applicable law or regulation. (B) If, prior to the expiration of the term of this Agreement, Customer terminates this Agreement (other than as provided in Paragraphs 4 and 6(A) above) or US LEC terminates this Agreement pursuant to Paragraph 6(A) due to Customer's breach, Customer shall be liable to US LEC for (i) a termination charge in an amount equal to 50% of the Minimum Monthly Commitment multiplied by the number of months remaining in the then current term; and (ii) a termination charge in an amount equal to any promotional credits, discounts or fee waivers previously provided by US LEC to Customer. In the event of termination of this Agreement for any reason Customer acknowledges and agrees that US LEC may withhold customer service information until US LEC receives payment for all amounts incurred by Customer through the effective date of termination. Nothing contained herein or in paragraph 2 shall be construed as prohibiting US LEC from pursuing any other legal or equitable remedy that may be available to it, or limiting the damages to which US LEC may be entitled in law or in equity, due to Customer's breach.

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7. **Equipment.** (A) US LEC will provide hardware and software owned, leased or developed by, or licensed to US LEC as outlined in Attachment A, which is necessary to perform the applicable Services (the "Equipment"). Customer agrees to use the Equipment solely in connection with the Services. US LEC and/or its suppliers have and will retain all rights, title and interest in and to the Equipment, including any intellectual property rights therein. Use of the Equipment may be subject to end-user licenses that are included with the Equipment. Customer will not remove any identification tags or other markings on the Equipment and will not cause, create or suffer any claims, liens, charges or encumbrances or security interests in, on or to the Equipment. With regard to any software components of the Equipment, Customer agrees it will not (i) use or make any copies of the software, (ii) reverse engineer, decompile, or disassemble the software, (iii) sell, resell, transfer, license, sublicense, or distribute the software, or (iv) create, write, or develop any derivative software or other software program that is based on such software. Customer agrees to indemnify, defend and hold US LEC and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees, that arise out of Customer's failure to comply with the foregoing. (B) Customer agrees to return the Equipment within thirty (30) days of termination or expiration of the Agreement. If Customer fails to return the Equipment within that period, US LEC shall have the right to (a) invoice Customer for the full replacement value for the Equipment and/or (b) pursue any other right it may have at law or in equity. The Equipment must be returned in the same condition as when it was originally delivered to Customer, except for customary wear and tear. (C) To the extent US LEC is performing the Services using hardware and/or software owned, leased or licensed by Customer (the "Customer Equipment"), Customer agrees to (a) provide US LEC or its suppliers with such reasonable and safe access to the Customer Equipment as is necessary to perform the Services, (b) secure any licenses, approvals or consents required for US LEC or its suppliers to access or use the Customer Equipment necessary to perform the Services, and (c) meet other physical and environmental requirements. Customer agrees to indemnify, defend and hold US LEC and its suppliers harmless from and against any and all claims (including intellectual property infringement claims), losses, liabilities and damages, including reasonable attorney's fees, that arise out of the Customer's failure to secure the licenses, approvals and/or consents set forth in this section. Customer also agrees Customer will not alter, modify or re-configure the Customer Equipment unless written notice of such is provided to US LEC in advance.
8. **Authorization to Perform Testing; Associated Risks.** Certain laws and regulations prohibit the unauthorized penetration of computer networks and systems. Customer hereby grants US LEC the authority to access Customer's networks and computer systems solely for the purpose of providing the Services. Customer acknowledges that the Services constitute permitted access to Customer networks and computer systems. In the event one or more of the IP Addresses Customer gives to US LEC are associated with computer systems that are owned, managed, and/or hosted by a third party service provider ("Host"), Customer agrees to: (i) notify US LEC of such Host arrangement prior to the commencement of any Services; (ii) obtain Host's written consent for US LEC to perform the Services on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein; (iii) provide US LEC with a copy of such consent, acknowledgement and acceptance; and (iv) facilitate any necessary communications and exchanges of information between US LEC and Host in connection with the Services. Customer agrees to indemnify, defend and hold US LEC and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Customer's failure to comply with this section. Customer will indemnify and hold US LEC and its suppliers harmless from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Customer provides. Customer acknowledges that the Services entail certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Services; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Customer computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.
9. **Intellectual Property.** US LEC or its suppliers are the exclusive owner of and will retain all rights, title, and interest in and to the Services and the Equipment, including copyrights, patent rights, trademarks, service marks, trade secrets, and other proprietary rights therein.
10. **Certain Damages.** Customer hereby agrees to reimburse US LEC for loss of or damage to any Services or related facilities or Equipment of US LEC, which may be caused by the negligence or willful misconduct of Customer, its agents, employees or representatives.
11. **Toll Free Service.** A Resp.Org. is an agent appointed by a customer to access the national toll free database, which stores characteristics of each toll free number, and to act on the Customer's behalf in defining and administering the toll free number(s) in the national database used by the Customer. US LEC provides Resp.Org. functions in accordance with Bell Operating Companies joint tariff for access to the toll free database, however, US LEC may, at its discretion, limit the quantity of numbers it manages as a Resp.Org. for any customer. Subject to the preceding sentence, Customer may request and agree to pay for US LEC to serve as its Resp.Org. Customer may also request and agree to pay for US LEC to subscribe to Toll Free Directory Listing for the number(s) assigned to Customer. Recurring charges, as specified in the applicable Published Rates, Terms and Conditions shall apply if Customer retains US LEC as Resp.Org. when using another Toll Free service provider. The Customer must place each Toll Free telephone number in actual and substantial use. If the Customer elects to retain a non-US LEC Resp.Org., the Customer must notify US LEC of any changes in the Customer's Resp.Org. in writing within 48 hours of the change and the Customer shall remain liable for all Resp.Org. functions provided to Customer by US LEC until such change in Customer's Resp.Org. is effective. In the event that a Customer transfers its Service to another Resp.Org., US LEC shall cease to subscribe to Toll Free Directory Listing Service on behalf of the Customer and the Customer is responsible for assuring that Directory Listing Service is maintained through the new Resp.Org. Customer remains responsible for payment of any outstanding charges for Toll Free Directory Listing(s). Customer is responsible for all outstanding indebtedness for services provided by a previous Resp.Org. or for any obligations of Customer to such previous service providers existing at the time of transfer to US LEC.

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12. **Special Construction.** Customer shall be responsible for all costs associated with any special construction requested by Customer as part of US LEC's provision of Service, and all costs arising from any Customer requested change in location of all or part of the Services prior to the completion of construction or installation.
13. **Customer Representation.** If Customer is a reseller or offers shared tenant services, Customer represents and warrants that it is in compliance with all applicable state and federal laws, including but not limited to any certification requirements.
14. **Liability of US LEC; Disclaimer of Warranties.** The liability of US LEC (or any other carrier furnishing any portion of the Services) for any interruption or failure of any Service furnished pursuant to this Agreement shall be limited to the amount or actual charges paid by Customer for the interrupted Service(s). US LEC shall not be liable for any interruption caused by any act or omission of any other carrier or other provider furnishing any portion of the Services, including directory listings. Customer may be entitled to receive a credit for errors and omissions in directory listings. Neither US LEC nor any other carrier furnishing any portion of the Services shall have liability for any fraudulent or unauthorized calls originating from or terminating to Customer's premises or the Services. NEITHER US LEC NOR ANY OTHER CARRIER FURNISHING ANY PORTION OF THE SERVICES SHALL HAVE LIABILITY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES SUFFERED BY CUSTOMER IN CONNECTION WITH SERVICES PROVIDED UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, NOTWITHSTANDING THAT US LEC OR THE OTHER CARRIER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. CUSTOMER HEREBY RELEASES US LEC AND ANY OTHER CARRIER FURNISHING ANY PORTION OF THE SERVICES (AND THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUPPLIERS) FROM ANY SUCH CLAIM, EXCEPT AS PROVIDED IN PARAGRAPH 4 ABOVE, US LEC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO ANY SERVICES, FACILITIES OR EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT. US LEC DOES NOT WARRANT, EXERCISE ANY CONTROL OVER OR MAKE ANY REPRESENTATIONS WHATSOEVER AS TO THE CONTENT, ACCURACY, NATURE, SUBJECT MATTER OR CORRECTNESS OF ANY DATA PASSED THROUGH OR COMMUNICATED THROUGH US LEC AND/OR THROUGH THE INTERNET AS A DIRECT OR INDIRECT RESULT OF US LEC'S SERVICES AND USE OF ANY SUCH INFORMATION IS AT THE CUSTOMER'S OWN RISK. CUSTOMER ACKNOWLEDGES THAT IT HAS SOLE RESPONSIBILITY OF ENSURING THAT (A) ITS PBX'S ARE PROGRAMMED TO CORRECTLY ROUTE 911 CALLS AND (B) ITS PHONE EQUIPMENT IS CONFIGURED TO PREVENT REMOTE ENTRY FOR THE PURPOSE OF GAINING ACCESS TO AN OUTSIDE LINE. US LEC IS NOT LIABLE TO CUSTOMER FOR ANY DIRECT, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING FROM ANY INCORRECT CUSTOMER PBX PROGRAMMING TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT TO THE EXTENT OF US LEC'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, CUSTOMER RELEASES US LEC FROM ALL LIABILITY AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS US LEC AND ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), ARISING FROM OR RELATING TO CUSTOMER'S FAILURE TO (A) PROGRAM A PBX TO CORRECTLY ROUTE 911 CALLS OR (B) CONFIGURE ITS PHONE EQUIPMENT TO PREVENT REMOTE ENTRY FOR THE PURPOSE OF GAINING ACCESS TO AN OUTSIDE LINE.
15. **Credit Information.** Upon request of US LEC, Customer will provide US LEC with a copy of Customer's most recent financial statement and/or the remittance portion of the Customer's most recent invoice from a current or previous telecommunications carrier. Customer's signature below constitutes authorization for US LEC to obtain credit information from any credit bureau or other investigative agency pertaining to the credit and financial responsibility of Customer. Customer understands that, as a result of this credit review, it may be required to submit a deposit or a guaranty(ies) of related parties in order to receive the Services.
16. **Service Level Agreements.** Any US LEC Service Level Agreement (the "US LEC SLA") attached hereto is hereby incorporated into the Agreement. The US LEC SLA is not applicable if any Service degradation or disruption (a) occurs during scheduled maintenance, (b) is related to acts or omissions of the Customer or authorized agent, (c) is the result of a malicious action by a third party against the Customer or authorized agent, (d) is caused by co-located equipment, facilities, or applications or (e) is caused by an "Act of God" or other "force majeure" event. US LEC reserves the right to amend the US LEC SLA, effective as of the date of US LEC's notice of any such amendment. In the event that any amendment to the US LEC SLA results in a material reduction of the US LEC SLA service levels or to the remedies available to Customer, Customer may terminate this Agreement without liability on written notice to US LEC during the thirty (30) days following notice of such amendment. In such event, Customer shall remain responsible for payment of all amounts incurred through the effective date of termination.
17. **Acceptable Use Policy.** Customer is obligated to read and comply with any and all terms and conditions of the current US LEC Acceptable Use Policy (hereinafter "AUP"). US LEC'S AUP is incorporated herein by reference in full and as it may be amended from time to time in the future. The AUP is displayed at www.uslec.com and is effective upon public posting. Upon the violation of any of the terms and conditions of the AUP by Customer, US LEC shall have the right to suspend or terminate this Agreement and any service by US LEC to Customer, consistent with applicable law.

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18. **Entire Agreement; Modification; Waiver.** This Agreement and any attachments, exhibits or addenda hereto, and any applicable Published Rates, Terms and Conditions constitute the entire agreement between the parties relating to the subject matter hereof. Except as set forth in the Published Rates, Terms and Conditions, there are no terms, conditions or obligations other than those contained herein and there are no verbal statements, representations, warranties or agreements with respect to this transaction, which have not been embodied herein. This Agreement may only be amended or modified by a written agreement executed by authorized signatories of the parties hereto. No waiver of any breach of this Agreement will be valid unless in writing and signed by the party against whom enforcement is sought, and no such waiver shall be deemed to be a waiver of any future breach.
19. **Notices.** All notices hereunder shall be in writing and mailed first class certified mail, return receipt requested, or delivered by hand to the address of the other party set forth on the first page of this Agreement or such other address as such party may designate from time to time by such notice and shall take effect: (a) if mailed, 3 business days after being deposited in the U.S. Mail or (b) when received, if delivered by hand.
20. **Governing Law.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Pennsylvania without regard to its choice of law rules.
21. **Assignment; Miscellaneous.** Customer may not assign this Agreement without the express written consent of US LEC. US LEC may assign this Agreement in whole or in part to (a) any subsidiary, parent company or other affiliate of US LEC; (b) pursuant to any sale or transfer of substantially all the business of US LEC; or (c) pursuant to any financing, merger or reorganization of US LEC, provided only that the assignee is licensed to provide the services assigned to it. Though US LEC may choose to assist Customer with the disconnection of services provided by Customer's previous carrier(s), Customer is solely responsible for such disconnection and for any continued billing by Customer's former carrier(s). If any provision of this Agreement shall be held to be illegal, invalid or unenforceable as a matter of law, the same shall not invalidate this Agreement, which shall be construed as if not containing such provision, and the rights and obligations of the parties shall be construed and enforced as if a commercially reasonable provision had been substituted in place thereof, consistent with the undertakings of the parties hereto. Notwithstanding anything contained herein to the contrary, neither party shall be responsible to the other for damages or losses caused by an "Act of God" or other "force majeure" event. This Agreement may be executed in one or more counterparts each one of which shall be deemed an original and all of which together shall constitute one and the same instrument. Neither party shall use the name of the other party for advertising or other such purposes without the prior written consent of the party, except that US LEC may include Customer's name in generic customer lists compiled from time to time. This offer expressly limits acceptance to the pre-printed terms and conditions as set forth herein, and those contained in US LEC's Acceptable Use Policy (incorporated herein by this reference and found at www.uslec.com). Any additional or different terms proposed by Customer (either by notation on this form or in another instrument previously or hereafter furnished to US LEC) are rejected in their entirety unless expressly agreed to in writing by a US LEC Director or Vice President of Sales.

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MAR-6-2006 15:24 FROM: BETHLEHEM AREA PUBLI 61086672767

MAR-6-2006

APR 13 2004

Anita Barrick
Bethlehem Area Public Library
11 West Church Street
Bethlehem, PA 18018-5888

Billed Entity Number: 125904
Form 471 Application Number: 476706
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

January 13, 2006

Anita Barrick
Bethlehem Area Public Library
11 West Church Street
Bethlehem, PA 18018-5888

Re: Applicant Name: BETHLEHEM AREA PUBLIC LIBRARY
Billed Entity Number: 125904
Form 471 Application Number: 476706
Funding Request Number(s): 1315801
Your Correspondence Dated: December 12, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1315801
Decision on Appeal: **Denied**
Explanation: _____

- On appeal, you seek reversal of the SLD's decision to deny funding for FRN 1315801. You state that you have not violated the 28 day waiting period. You close by stating in your appeal letter, that your original one year contract for funding year 2004-2005, signed on January 16, 2004, provides for automatic renewal, and have enclosed a letter from the provider extending the contract.
- Upon thorough review of the appeal letter and relevant documents, the SLD has determined that you signed a contract prior to the Allowable Contract Date (ACD). During the application review, you were asked to provide copies of signed and dated contracts and verification that the posted Form 470 was the establishing Form 470 for the services requested on the Form 471. In the response provided to the SLD on October 11, 2005, you provided a contract with

Box 125 – Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981
Visit us online at: www.sl.universalservice.org

a signature date of January 16, 2004 which is before the ACD of January 1, 2005. Although you stated the contract renews automatically, you did not provide the correct Form 470 that established bidding for the services on your Form 471. FCC Rules state that a contract must be signed and dated on or after the Allowable Contract Date as calculated by the Form 470 posting date, but prior to the submission of the Form 471.

- The Item 21 attachments you provided in support of your Form 471 application, or documentation provided during review of your application, show that you selected your vendor prior to the end of the 28-day posting period. In your Receipt Notification Letter, SLD notified you that the earliest date upon which you could sign a contract or enter into an agreement (your Allowable Contract Date) was January 1, 2005. Consequently, SLD denies your appeal because your application did not comply with the competitive bidding requirement that your Form 470 be posted on the web site for 28 days prior to signing a contract or entering into an agreement for new products and/or services.
- You selected your vendor for new services prior to the expiration of the 28-day posting period. FCC rules require that except under limited circumstances, all Forms 470 received be posted on the USAC web site for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting a Form 471. 47 C.F.R. §§ 54.504; 54.511(a) and (c). FCC rules further require that the Administrator send the applicant a confirmation when the Form 470 has been posted, and inform the applicant of the earliest date upon which they may sign a contract with the vendor it selects. 47 C.F.R. § 54.504(b)(4). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order on Reconsideration*, 12 FCC Rcd 10095, p. 10098; FCC 97-246 ¶ 9 (rel. Jul. 10, 1997). New services include tariff telecommunications services that are NOT subject to an existing, binding, written contract.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division

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Visit us online at: www.sl.universalservice.org

Universal Service Administrative Company

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MAR-6-2006 15:27 FROM: BETHLEHEM AREA PUBLI 6108672767 TO: 12024180187 P: 12/12